IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Opinion on Remand

TERRANCE LAVAR DAVIS v. STATE OF TENNESSEE

Appeal from the Circuit Court for Hickman County
No. 07-5033C Timothy Easter, Judge

No. M2009-00011-CCA-RM-HC - Filed April 8, 2009

The petitioner, Terrance Lavar Davis, appeals as of right the Hickman County Circuit Court's summary dismissal of his petition for a writ of habeas corpus. The petition alleges that his bargained-for sentences of twenty-two years to be served at one hundred percent for two counts of possession of cocaine for resale in a drug-free school zone is illegal because the release eligibility is in contravention to the 1989 Criminal Sentencing Reform Act. The State argues that release eligibility is non-jurisdictional and can be an element of a plea-bargained sentence. Following our initial review, we reversed the judgment of the trial court and remanded for further proceedings. Terrance Lavar Davis v. State, No. M2007-01729-CCA-R3-HC, 2008WL1958174 (Tenn. Crim. App. May 6, 2008). The State applied for permission to appeal this court's decision with the Tennessee Supreme Court pursuant to Rule 11 of the Rules of Appellate Procedure. On January 5, 2009, the supreme court granted the application for permission to appeal for the purpose of remanding the case to this court for reconsideration in light of the supreme court's opinion in Edwards v. State, 269 S.W.3d 915 (Tenn. 2008). Terrance Lavar Davis v. State, M2007-01729-SC-R11-HC (Tenn. Jan. 5, 2009) (Order Granting Perm. App. and Remanding for Reconsideration). Following our reconsideration, we conclude that the judgment of the trial court should be reversed and the case remanded for further proceedings consistent with this opinion.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Reversed; Case Remanded.

D. KELLY THOMAS, JR., J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and ALAN E. GLENN, JJ., joined.

Jay Norman, Nashville, Tennessee, attorney for appellant, Terrance Lavar Davis.

Robert E. Cooper, Jr., Attorney General & Reporter; and Mark A. Fulks, Assistant Attorney General, Nashville, Tennessee, attorneys for appellee, State of Tennessee.

OPINION

The record reflects that the petitioner pled guilty to two counts of possession of more than 26 grams of cocaine for resale in a drug-free school zone and received a total effective sentence of twenty-two years. As an element of the plea bargain, the petitioner agreed to a release eligibility of one hundred percent. This court affirmed the denial of a petition for post-conviction relief. Terrance Davis v. State, No. M2005-01902-CCA-R3-PC, 2006WL3290822 (Tenn. Crim. App. Nov. 13, 2006), perm. app. denied (Tenn. March 12, 2007).

The petitioner filed a petition for a writ of habeas corpus alleging that his sentences are illegal because a release eligibility date of one hundred percent exceeds that which is allowed for a violation of the Drug Free School Zone Act. The petitioner admits that he agreed to this sentence but insists that even an agreed sentence must be imposed within the limits of statutory authority. The State argued in the habeas corpus court that release eligibility is an element of plea bargaining that could be negotiated between the State and a defendant, regardless of whether the offender is statutorily eligible for such release status.

Additionally, the State argued, and the habeas court agreed, that the judgments of conviction reflect an imposition of sentences in accordance with the Drug-Free School Zone statute and that the reference to one hundred percent service was a random notation, not affecting the sentences. However, also attached to the habeas corpus petition are the Petitions to Enter Plea of Guilty that indicate the parties agreed that the sentences would be served at one hundred percent service. The judgments and attached documents establish that the sentences were to be served at one hundred percent. See Summers v. State, 212 S.W.3d 251 (Tenn. 2007). Furthermore, this court's opinion affirming the denial of post-conviction relief acknowledges that the sentences were to be served at one hundred percent. Terrance Davis, at *1. Therefore, we respectfully disagree with both the State and the habeas court's characterization of the judgments in this case and will address the propriety of the one hundred percent release eligibility on the merits in the context of this habeas corpus proceeding.

ANALYSIS

Tennessee law provides that "[a]ny person imprisoned or restrained of his liberty under any pretense whatsoever . . . may prosecute a writ of habeas corpus to inquire into the cause of such imprisonment." Tenn. Code Ann. § 29-21-101. Habeas corpus relief is limited and available only when it appears on the face of the judgment or the record of proceedings below that a trial court was without jurisdiction to convict the petitioner or that the petitioner's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). To prevail on a petition for a writ of habeas corpus, a petitioner must establish by a preponderance of the evidence that a judgment is void or that a term of imprisonment has expired. See State ex rel. Kuntz v. Bomar, 214 Tenn. 500, 504, 381 S.W.2d 290, 291-92 (1964). If a petition fails to state a cognizable claim, it may be dismissed summarily by the trial court without further inquiry. See State ex rel. Byrd v. Bomar, 214 Tenn. 476, 483, 381 S.W.2d 280, 283 (1964); Tenn. Code Ann. § 29-21-109. We note that the determination of whether to grant habeas corpus relief is a matter of law; therefore, we will review the habeas corpus court's

finding de novo without a presumption of correctness. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001).

In State v. Mahler, 735 S.W.2d 226, 228 (Tenn. 1987), our supreme court held that questions of offender classification and release eligibility may be waived by a knowing and voluntary guilty plea. In Hicks v. State, 945 S.W.2d 706, 707 (Tenn. 1997), the court reiterated that a plea-bargained sentence is legal as long as it does not exceed the maximum punishment authorized for the offense. The court in Hicks held once again that a knowing and voluntary guilty plea waives any irregularity as to offender classification or release eligibility. Hicks, 945 S.W.2d at 709.

Three years later, in McConnell v. State, 12 S.W.3d 795 (Tenn. 2000), our supreme court granted post-conviction relief to a petitioner who received a sentence that, although within legal limits of the 1982 Criminal Sentencing Reform Act, was imposed for a conviction not eligible to be sentenced under the 1982 Act because it occurred subsequent to the 1989 Criminal Sentencing Reform Act. Similarly, the court granted habeas corpus relief to a petitioner who agreed to a sentence of life without parole when that option was not statutorily available to him because it did not exist at the time of the commission of the offense. Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000). More recently, in Smith v. Lewis, 202 S.W.3d 124, 128 (Tenn. 2006), our supreme court granted habeas corpus relief to a petitioner who agreed to a sentence for rape with a release eligibility of thirty percent. In granting relief, the court held that the sentence was illegal because the thirty percent release eligibility was precluded by the 1989 Act. See Tenn. Code Ann. § 40-35-501(i)(2). From these cases, we may discern that while offender classification and release eligibility are generally non-jurisdictional elements that may be waived by otherwise valid plea negotiations, the agreed terms of a plea bargain must still be allowed by statute in order for such elements to retain this non-jurisdictional nature. Simply put, some elements of sentences not allowed by statute produce a jurisdictional defect rendering the sentence void.

Indeed, as restated recently by our supreme court in Edwards v. State,"the setting of punishment for criminal offenses is a legislative function," and as such, "[s]tatutes prescribing and defining available punishments both confer and limit the jurisdiction of trial courts to impose sentences for criminal offenses." Edwards, 269 S.W.3d at 921 (citations omitted). Therefore, "trial courts lack jurisdiction to impose sentences in direct contravention of a governing sentencing statute . . . [and those] sentences not available under the sentencing statutes governing the case." Id. Our supreme court further stated that "[s]uch sentences are illegal, amounting to 'jurisdictional defects' that render the judgments imposing them void and subject to attack in a habeas corpus proceeding." Id. Additionally, the court clearly stated that "habeas corpus relief is available whether the trial court imposed the illegal sentence after a jury trial or the parties agreed to the illegal sentence in plea negotiation . . . . because a guilty plea waives only non-jurisdictional defects." Id. Furthermore, "[a] guilty plea does not waive the jurisdictional defects that constitute grounds for habeas corpus relief, *nor does a guilty plea confer jurisdiction upon the trial court to impose a sentence not available under governing statutes*." Id. at 921-922 (emphasis added)(citations omitted).

Turning to the facts of this case, the judgments and documents attached to the petition for a writ of habeas corpus show that the petitioner agreed to a Range I sentence of twenty-two years each for the two counts of possession for resale of more than 26 grams of cocaine in a Drug-Free School Zone, Class A felonies. Tenn. Code Ann. §§ 39-17-417(i)(5) & -432(b)(2)(E). The term of imprisonment authorized for a Class A felony is fifteen to sixty years. Tenn. Code Ann. § 40-35-111(b)(1). Clearly, the lengths of the sentences in this case are within the limits proscribed by the statute. Furthermore, the petitioner would have been free to agree to a sentence outside his offender classification for a length up to sixty years without offending the jurisdiction of the trial court to impose such a sentence.

However, with regards to the release eligibility reflected in the judgments and admittedly agreed to by the petitioner, the attached documents clearly reflect a release eligibility of one hundred percent. The governing statute regarding release eligibility for a violation of the Drug-Free School Zone Act can be found in Tennessee Code Annotated section 39-17-432(c),(d) and (e) which provides for release eligibility upon the "service of the *entire minimum sentence* for [the] defendant's appropriate range." Tenn. Code Ann. § 39-17-432(c),(d), & (e) (emphasis added). Therefore, a defendant sentenced as a Range I offender is eligible for release after the completion of fifteen years' imprisonment. We further note that a violation of the Drug-Free School Zone Act is not one of the enumerated offenses for which the legislature has mandated a defendant serve one hundred percent prior to consideration for release. Tenn. Code Ann. § 40-35-501(i)(2); see also Tenn. Code Ann. § 39-17-432(d) ("the provisions of title 40, chapter 35, part 5, relative to release eligibility status and parole, shall not apply to or authorize the release of a defendant sentenced for a violation of [the Drug-Free School Zone Act] prior to the service of the entire minimum sentence for such defendant's appropriate range of sentence"). Thus, a Range I sentence of twenty-two years with a one hundred percent release eligibility exists nowhere within the sentencing authority of the Drug-Free School Zone Act. Therefore, based upon the previously stated principles recently reiterated in Edwards, this court concludes that the sentence in this case was imposed without jurisdiction conferred by statute and is therefore "void and subject to attack in a habeas corpus proceeding." Edwards, at *4.

Furthermore, despite the State's assertion to the contrary, this court cannot conclude that a bargained-for sentence that results in a *more severe* release eligibility status than that allowed by the statute is any less erroneous than a bargained-for sentence that results in a *less severe* release eligibility status than that allowed by statute. See Tenn. Code Ann. § 40-35-501(f) (generally, the maximum release eligibility is sixty percent when sentenced as a career offender). Therefore, we conclude that the habeas court erred in summarily dismissing the petition for a writ of habeas corpus because the sentence imposed is in direct contravention to the statute regarding release eligibility for violation of the Drug-Free School Zone Act, rendering it void on its face. Because it is apparent from the record that the illegal release eligibility was a bargained-for element of the sentence, the habeas court shall remand the case to the trial court of conviction to allow a withdrawal of the guilty plea or, in the alternative, for resentencing upon the original plea. Id. at 129 (citing McClaney, 59 S.W.3d at 95-96 and McConnell, 12 S.W.3d at 800); see also Summers v. Fortner, 267 S.W.3d 1,

4-5 (Tenn. Crim. App. 2008) (in-depth discussion of remedies available to habeas corpus petitioner who successfully challenges a judgment arising from a guilty plea).

CONCLUSION

Based upon the foregoing and in full consideration of our supreme court's opinion in Edwards, we conclude that habeas court erred in summarily dismissing the petition for a writ of habeas corpus. The judgment of the habeas court is reversed and the case is remanded for further proceedings consistent with this opinion.

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D. KELLY THOMAS, JR., JUDGE